

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 34 of 1981

in

SPECIAL CIVIL APPLICATION No. 3624 of 1979

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PRINCIPAL SECRETARY

Versus

A R SINGH

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Appearance:

MR BY MANKAD instructed by MR HM BHAGAT for Appellants

MR TR MISHRA for Respondent No. 1  
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WITH

LETTERS PATENT APPEAL No 35 of 1981

in

SPECIAL CIVIL APPLICATION No 684 of 1980

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STATE OF GUJARAT

Versus

RAMBHAROSE SING JEPALSINGH

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Appearance:

MR BY MANKAD instructed by MR. HM BHAGAT for Appellants

MR AKSHAY H MEHTA for Respondent No. 1  
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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question

of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 09/11/98

ORAL JUDGEMENT (Per Patel, J.)

Respondents were serving in the police department. By filing the writ petitions under Article 226 of the Constitution of India, they challenged the order of their dismissal passed by the Governor of Gujarat purporting to act in exercise of the powers under Clause (c) of the Second Proviso to Article 311 (2) of the Constitution of India, without holding any inquiry as prescribed under the Bombay Police (Punishment & Appeal) Rules, 1956 since the Governor was satisfied that in the interest of security of the State of Gujarat, it was not expedient to hold any inquiry as enjoined by Article 311 (2) of the Constitution.

2. It appears that there was an agitation by the police personnel (Class III) in April and May 1979 which ended in a compromise. Some were reduced in ranks though it was agreed that for participating in the movement for enforcement of their demand, no action will be taken. Before the learned Single Judge, five questions were raised, which are reproduced hereunder:-

(1) If the impugned order is made by the Governor in his absolute discretion, it is bad in law and void since he has no absolute discretion except in specified cases as held in Samsher Singh vs. State of Punjab AIR 1974 SC 2192 and the power under clause (c) of second proviso to Article 311 (2) is not one of such specified absolute discretionary powers.

(2). If the impugned order is executive action of the Government, which, on principle and authority undoubtedly is, the said order is bad in law and void being admittedly contrary to Article 311 (2) of the Constitution and section 26 of the Bombay Police Act read with Rule 4 of the Bombay Police (Punishment and Appeal) Rules, 1956.

(3). The impugned order is bad in law and void since admittedly the Governor has acted without advice of the cabinet of the Ministers as required under

Article 163 of the Constitution of India.

(4). In any case, since no material is disclosed in the affidavit in reply which would justify the decision of the Governor to dispense with the inquiry in exercise of the power under clause (c) of second proviso to Article 311 (2) of the Constitution, the impugned order is bad in law and void since it is not a speaking order.

(5). No order of dismissal can be passed against a Government servant who is said to have been engaged in activities subversive to national security without being given an opportunity to show cause against the proposed action having regard to rules 3 and 4 of the Gujarat Civil Services (Safeguarding National Security) Rule 1962 which empower the Governor after show cause notice to retire the Government servant who, in his opinion, is engaged in such subversive activities prejudicial to national security"

3. The learned Single Judge, considering the decision of the Supreme Court in the case of Samsher Singh vs. State of Punjab reported in AIR 1974 SC 2192 and Sardarilal vs. Union of India reported in AIR 1971 SC 1547, and also other cases ultimately held that :-

" .... it cannot, therefore, be gainsaid that the power conferred under clause (c) of proviso to Article 311 (2) of the Constitution to the President or the Governor is not one which is to be exercised by the President or the Governor, as the case may be, personally in his absolute discretion but like any other ordinary executive actions of the Union Government or the State Government is to be exercised on the aid and advice of the Council of Ministers. In other words, it is an executive act of the Union Government or the State Government.

4. By a detailed judgment, after considering the legal position, learned Single upheld the contentions raised on behalf of the petitioners, allowed the petitions and quashed and set aside the impugned order. Learned Single Judge further held that the petitioners continue in service of the State Government all along as if the impugned order has not been made.

5. In the case of UNION OF INDIA VS. TULSIRAM PATEL reported in 1985 (3) SCC 398, where a large number of

Railway employees participated in an illegal all-India strike and Government responded by ordering their dismissal enmassee, the Apex Court pointed out the action was justified in the circumstances. At the same time it was held that recording of reasons for forming the requisite satisfaction is mandatory, though it is not necessary that those reasons must find a place in the order of punishment. It was further held that the authority must produce the same when called upon to do so by the Court. This decision is required to be considered in the light of the fact that no material was placed before the Court in the instant case to justify the exercise of powers.

6. Learned Single Judge has also pointed out in the judgment that "no material whatsoever has been placed on the record before this Court to indicate much less justify warranting exercise of power under clause (c) of the second proviso to Article 311 (2) of the Constitution." Learned Single Judge, after hearing the parties, on the basis of the material placed on record, has come to this conclusion. It is required to be noted that the powers which are conferred on the authority are to be exercised in accordance with law. It may not be necessary that the reasons must find place in the order of punishment itself, but it is necessary to place before the Court in support of the order passed by it.

7. We have gone through the detailed judgment passed by the learned Single Judge and we find no reason at all to interfere with the said judgment. On behalf of the appellant, nothing is pointed out as to how the order passed by the learned Single Judge is bad and requires to be interfered. In the circumstances, the appeals stand dismissed. No order as to costs.

csm./ -----